



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

December 06, 2023

Phil Pogledich
County Counsel
County of Yolo
625 Court Street, Room 201
Woodland, CA 95695

Re: Your Request for Informal Assistance
Our File No. I-23-172

Dear Mr. Pogledich:

This letter responds to your request for advice regarding Section 84308 provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Your request for advice is general in nature as it does not specifically identify a governmental decision pending before the Yolo County Board of Supervisors. Accordingly, we are treating your request as one for informal assistance.²

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Is the prohibition against an officer of an agency accepting, soliciting or directing contribution greater than \$250 from a party or participant to a proceeding for a period of twelve months following the date of the final decision applicable to Supervisor Mary Vixie Sandy, a

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

member of the Yolo County Board of Supervisors, where the date of the final decision before the Board was prior to her appointment to office?

CONCLUSION

No. Where a final decision was reached prior to her appointment to the elected office, and she did not otherwise have decision making authority over the proceeding or exercise authority or budgetary control over the agency officers who did, she does not meet the definition of “an officer of an agency” for the particular proceeding. The Section 84308 prohibition on accepting, soliciting or directing contributions from a party or participant to the proceeding for 12 months following the final decision will not apply to the appointed official for contributions from a party or participant to the proceeding.³

FACTS AS PRESENTED BY REQUESTER

On October 5, 2023, following the unexpected passing of Supervisor Gary Sandy, Governor Newsom appointed Supervisor Gary Sandy’s wife, Mary Vixie Sandy, to serve as the District 3 representative on Yolo County’s Board of Supervisors. Supervisor Mary Vixie Sandy also serves as Executive Director of the California Commission on Teacher Credentialing, a state agency post she has held since 2011. Her appointed term to the Board of Supervisors will end when a supervisor is elected and assumes office following the next general election. Supervisor Vixie Sandy is a candidate for the District 3 seat on the March 5, 2024, primary ballot.

You request, to illustrate the situation, whether Supervisor Vixie Sandy may accept a \$500 contribution from a developer that had an application before the Board of Supervisors where a final decision on the application was reached prior to the date Supervisor Vixie Sandy was appointed to her office.

ANALYSIS

The Act’s “pay to play” restrictions, contained in Section 84308, aim to ensure that officers of government agencies are not biased by contributors or potential contributors of large campaign contributions, who might appear before them in a proceeding involving a license, permit or entitlement for use. Section 84308 is aimed not only at actual corruption or bias, but also the appearance of corruption or bias which may occur if a public officer were to solicit or accept contributions from a party or financially interested participant while a proceeding is pending before the public officer’s agency or has recently concluded.

Section 84308(b) prohibits an officer of an agency from accepting a contribution of more than \$250 from a party while the entitlement proceeding is pending and for 12 months following the final date of the decision. This provision states:

While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an

³ We caution that this conclusion does not apply to the extent the party or participant is also a party or participant to a proceeding pending before the County after Supervisor Vixie Sandy’s appointment to office.

officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer's own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

Additionally, Section 84308(e)(2) prohibits a party to an entitlement proceeding from making a contribution of \$250 or more to "any officer of that agency" during the proceeding and for 12 months following the date the final decision is rendered by the agency. At issue here is whether Supervisor Vixie Sandy meets the definition of "an officer of an agency" in regard to a proceeding that was before the County Board of Supervisors and finally decided prior to her appointment. We advise that she does not. Regulation 18438.1(d) defines an "officer of an agency" as limited to those in a decision making capacity, or with authority over the proceeding and serving in one of the listed capacities:

(d) An officer of an agency includes only those persons who may make, participate in making, or in any way attempt to use their official position to influence a decision in the license, permit, or entitlement for use proceeding, or who exercise authority or budgetary control over the agency of officers who may do so, and:

(1) Serve in an elected position, including any official appointed to an elected position due to an interim vacancy or an election otherwise canceled because the official was the sole candidate for the position;

(2) Serve as a member of a board or commission;

(3) Serve as the chief executive of a state agency or county, city or district of any kind;
or

(4) Have decisionmaking authority with respect to the proceeding involving a license, permit, or other entitlement for use and is also a candidate for elected office or has been a candidate for elected office in the 12 months prior to the proceeding.

Because of her appointment to the elected position due to an interim vacancy, Supervisor Vixie Sandy is currently "an officer of the agency" for any proceeding involving a license, permit or other entitlement for use that comes before the County Board of Supervisors in which she has decision making authority or may exercise authority or budgetary control over the County officers who may do so.⁴ She will be subject to the prohibitions of Section 84308 for these proceedings.

However, in regard to a particular proceeding before the County Board of Supervisors in which a final decision was made prior to her appointment, she does not meet this definition. She

⁴ We note that she is "an officer of the agency" with respect to any decisions that may come before her in her capacity as Executive Director of the California Commission on Teacher Credentialing, a state agency.

was not in a position to influence the proceeding, nor do the facts indicate that she otherwise had authority or budgetary control over the agency officers at the time of the proceeding. Therefore, in regard to a proceeding that reached a final decision prior to her appointment, the 12 month prohibition on accepting, soliciting or directing a contribution in excess of \$250 will not apply to contributions from a party or participant in the proceeding unless the person is also a party or participant in another separately pending proceeding. Similarly, a party to the proceeding (not separately involved in another pending proceeding) is not prohibited from making a contribution to her in excess of \$250 within the 12 month period as she does not meet the definition of “an officer of the agency” for that particular proceeding. (Section 84308(e)(2).)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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